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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,964	05/30/2001	Kahoru Tsujimoto	2001-0210A	3465

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EXAMINER
JASTRZAB, KRISANNE MARIE

ART UNIT	PAPER NUMBER
1744	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/763,964	TSUJIMOTO ET AL.	
	Examiner	Art Unit	
	Krisanne Jastrzab	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *17-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *11/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 17-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohama et al., U.S. patent No. 5,436,268 in view of Fujita et al., U.S. patent No. 5,928,661 and Kunze U.S. patent No. 5,230,867.

Ohama et al., teach substantially the invention as claimed namely an antimicrobial material including a base carrier material impregnated with an antimicrobial agent and coated in a manner such that it is encapsulated in an air permeable material. The encapsulated antimicrobial material is further contained in a container means having pores or apertures capable of passing antimicrobial vapor and covered with means to contain those vapors until needed. Ohama et al., teach the application of such apparatus within food processing devices, including those for cooling. Ohama et al., does not specifically teach the cover being a peelable film. See column 6, column 11, line 20 through column 12, line 15, column 15 and column 20, lines 49-60.

Fujita et al., teaches the use of a naturally occuring resin or rosin, instead of a synthetic thermosetting resin, for the controlled release of an aromatic agent such as alkyl isothiocyanate because it is superior in safety and in the controlled release of the substance, as well as being more easily processed. The composition resin and aromatic agent are useful in treatment of food products for retaining freshness. See column 1, lines 14-45 and lines 50-62, column 3, lines 20-68, and column 5, lines 60 through column 6, line 6, also, column 6, lines 23-43.

Kunze et al., teach a packaging system for controlled-release delivery of treating vapors wherein a porous pad containing the agent is located in a container and covered

by a vapor permeable, and therefor apertured top surface means (3). The top surface means (3) being covered at a location spaced therefrom, by a peelable impermeable cover means. The container is placed in the area to be treated, the cover peeled off and the vapor diffuses to the surrounding area at a controlled rate. Kunze et al., teaches controlled release of aromatics.

It would have been well within the purview of one of ordinary skill in the art to substitute the controlled release resin for the antimicrobial means of Ohama et al., with the rosin ester of Fujita et al., and to contain the resulting composition within a system such as taught in Kunze et al., with the inclusion of an aromatic as well, because it would provide for the effective controlled release of the antimicrobial to optimize shelf life within a refrigerator while simultaneously counteracting any unpleasant odor that may accompany the antimicrobial activity.

With respect to claims 17, 27 and 28, Ohama et al., further teach the inclusion of an essential oil in the composition when treating food items for the retention of freshness, to overcome the unpleasant odor of AIT, and it would have been well within the purview of one of ordinary skill in the art to choose an essential oil such as peppermint oil because it is well recognized as a desired fragrance for food. See column 13, line 60 through column 14, line 25. It is further noted that Fujita et al., also teaches the acceptability of peppermint oil in the rosin-based composition. See column 3, lines 34-40.

With respect to claim 20, both Ohama et al., and Fujita et al., teach the inclusion of a viscosity-enhancing ingredient. See column 4, lines 59-65 and column 6, lines 25-35 of Ohama et al, and column 3 line 50 through column 4, lines 21 of Fujita et al.

With respect to claim 25, Ohama et al., further teach the inclusion of an aromatic of the herbal type (see column 4, lines 34-40) and it would have been well within the purview of one of ordinary skill in the art to choose a citrus type as well, because of it's known and expected compliment to food uses.

With respect to claims 27 and 28, Ohama et al., clearly teaches the use of the composition in food processing apparatus which include cooling or refrigeration apparatus (see column 11, lines 44-52) and it would have been well within the purview of one of ordinary skill in the art to place the apparatus of the combination above within a refrigerator and located such that air flow would occur there over in order to distribute the vapors released, such as any air passages within the refrigerator.

Response to Arguments

Applicant's arguments with respect to claims 17-28 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that the prior art of record fails to teach or suggest the composition, as now claimed in the newly added claims 17-28, however, the Examiner would maintain that the combined references do clearly teach such composition.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Krisanne Jastrzab
Primary Examiner
Art Unit 1744

January 23, 2006